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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1946.

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## No. 975 .

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UNITED STATES OF AMERICA ex rel.
MAXIMILLIAN KARL REICHEL,
Petitioner,

v.

UGO CARUSI, COMMISSIONER OF IMMIGRATION
AND NATURALIZATION SERVICE,
Respondent.

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**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.**

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IN THE

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TERM, No. .

*United States of America ex rel. Maximillian Karl Reichel,*

*Petitioner,*

v.

*Ugo Carusi, Commissioner of Immigration and Naturalization Service,*

*Respondent.*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

TO THE HONORABLE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your Petitioner, MAXIMILLIAN KARL REICHEL, respectfully prays the Court for the issuance of a Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit to review a judgment of that Court entered November 6, 1946 affirming a judgment of the District Court of New Jersey entered January 11, 1946.

A certified transcript of the record included in the proceedings of the Circuit Court of Appeals together with the requisite number of copies thereof have been filed in conformity with Rule 38 of this Court.

## SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED.

Your Petitioner was taken into custody August 2, 1944 pursuant to a Presidential Warrant theretofore issued under the provision of the *Alien Enemy Act 50 U. S. C. A. Sec. 21 (Act of July 6, 1798 as amended by Act of April 16, 1918 C. 55, 50 Stat. R. S. Sec. 4067)* (R. 2a). He is now in the custody of the Respondent, the Commissioner of Immigration and Naturalization, being held as an alien enemy, that is, as a German citizen.

A Petition for a Writ of *Habeas Corpus*, the Petitioner being the relator, was filed in the District Court of New Jersey November 20, 1945, in which it was asserted that the Petitioner was not a German citizen.

A Writ of *Habeas Corpus* was issued December 14, 1945.

On December 28, 1945 a hearing was held on the return of the Writ and a verdict entered dismissing the Writ. This action was confirmed in an opinion filed January 4, 1946 followed by an order entered January 11, 1946. The Petitioner was remanded to the custody of the Respondent, the Commissioner of Immigration.

An appeal was taken to the Circuit Court of Appeals of the Third Circuit, which appeal was dismissed in an Opinion filed October 1, 1946. A Petition for rehearing was filed, which was dismissed November 6, 1946 with an Opinion. These two Opinions are attached hereto marked exhibits "A" and "B".

The basic facts in the case are not in controversy. They are largely matters of general history.

Maximillian Karl Reichel, the Petitioner was born April 11, 1905 in the town of Krinsdorf, which is located in what was once the Kingdom of Bohemia, and in 1619 became the Province of Bohemia, part of the Austro-Hungarian Empire. At the time of his birth the political

sovereign of his native land was the Emperor of the Austro-Hungarian Empire (R. 11a-12a).

Before the conclusion of the First World War, the independence of Bohemia was recognized by the Austro-Hungarian Government. By the Treaty of St. Germaine, signed September 10, 1919, the existence of the Republic of Czechoslovakia was recognized by the great powers. The Republic included Bohemia and other provinces of the Empire. The Petitioner continued to reside in his native land as a citizen of Czechoslovakia. He directed his attention to biochemistry and was graduated from the technical high school in Prague in 1932. He continued post-graduate studies with a fellowship until 1934. In the Fall of that year he went to Freiburg, Germany, where he took a position with a Dr. Thanhouser who had been dismissed from the University of Freiburg and had established a private laboratory in that City (R. 13a). The following year Dr. Thanhouser came to the United States as a Professor at Tufts College near Boston in Massachusetts. He asked the Petitioner to join him which the Petitioner did and came to the United States in the middle of 1935 (R. 14a) as a Czechoslovakian citizen on a Czechoslovakian passport (R. 16a). The Munich Agreement was signed September 29, 1938. It provided for the transfer of the Petitioner's native land to the Third German Reich (R. 14a). This Agreement was confirmed by a Treaty published November 20, 1938, between the Third German Reich and the Government of the Republic of Czechoslovakia (R. 60a). The Petitioner's family, which had lived for many centuries in the ceded portion of Bohemia (R. 12a), remained as residents thereof following the cession (R. 17a-18a-27a). The Petitioner applied to the German Consul in Boston in or about November 1, 1938 for a German passport (R. 16a). This passport was issued to him September 6, 1939 (R. 20a). He actually received it in October of 1939 at which time he turned in his Czechoslovakian passport (R. 16a)

and registered for military service for the Third German Reich (R. 20a).

On May 8, 1945, the armies of the Third German Reich surrendered and in the "Report of the Tri-partite Conference of Berlin" known as the "Potsdam Agreement," which was published August 3, 1945, the Republic of Czechoslovakia was recognized as established with its former boundaries. The United States was party to this Agreement. The political sovereign of the Petitioner's native land is now the Republic of Czechoslovakia.

Additional facts relating to the life of the Petitioner in the United States may be stated briefly as follows:

He continued with his work at Tufts College, residing in Boston, from the time of his arrival in this Country in 1935 until February 1, 1940. He was out of employment until May 15, 1940 when he took a position with a subsidiary of the General Aniline and Film Corporation, the Oxalid Company at Johnson City, where he remained until the 13th of January 1941, being then transferred to the Company's research laboratory in Renssaeler, New York. On the 26th day of October 1942 he went to Easton, Pennsylvania for the same Company and established a research laboratory. He was still working there when he was interned in August 1944 (R. 21a-22a).

On August 17, 1940 he filed his "Declaration of Intention" to become a citizen of the United States (R. 22a). In February of 1941 he registered as an alien, classifying himself as a German national (R. 29a). He registered for the draft under our own Selective Service Act making no claim for exemption as an alien or an alien enemy. He was classified as 2-B, namely, a person engaged in essential war work. This classification was made at the application of his employer (R. 28a-29a).

By letters dated April 26, 1942, received from the State Department and the Swiss Legation, he was notified that his name appeared on a list for repatriation at the

request of the German Government. He permitted his name to remain on the list and at the direction of the State Department reported to Ellis Island May 1, 1942 for repatriation, but was told that the Agreement between Germany and the United States was off and he returned to his work. His name remained on the list until his internment (R. 22a-23a).

The Petitioner was interviewed by an agent of the Department of Justice in December 1943. He was arrested on a Presidential Warrant March 16, 1944 (R. 68a), was given a hearing before the Alien Enemy Board March 17, 1944 (R. 39a), and paroled while he continued some important work dealing with "light radar bulbs, light sensitive processes" (R. 32a). A number of patents were taken in his name by the Company. He was finally interned as already stated August 2, 1944 and has since been in custody.

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## JURISDICTION OF THIS COURT.

(*a*) The statutory provision believed to sustain the jurisdiction of this Court in Sec. 347 of Title 28 of the United States Code providing, *inter alia,* for writs of certiorari to circuit courts of appeal.

(*b*) The Statute of the United States which is to be interpretated in its application to the Petitioner is the *Alien Enemy Act, 50 U. S. C. A. Sec. 21 (Act of July 6, 1798 as amended by Act of April 16, 1918, C. 55; 50 Stat. R. S. Sec. 4067),* which provides, *inter alia,* that

> "Whenever there is a declared War between the United States and any foreign nation or government * * * all natives, citizens, denizens, or subjects of the hostile nation or government * * * who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured and removed, as alien enemies."

(c) The date of the judgment to be reviewed is November 6, 1946.

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## QUESTIONS PRESENTED.

1. Is the Petitioner a native, citizen, denizen or subject of a "hostile nation or government" liable as such "to the apprehended, restrained, secured and removed," as an alien enemy?

2. Is the Petitioner a citizen of the Third German Reich or the German Nation or Government?

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## REASONS RELIED ON.

The Circuit Court of Appeals for the Third Circuit has decided an important question of Federal Law, which has not been, but should be settled by this Court.

It is important that there be an authoritative interpretation of the Petitioner's status. Millions of others are in similar position, many of whom are or will come within the orbit of our Law.

It is necessarily important to determine the question as to whether a power to restrain a resident of the United States of his liberty under a Federal Statute without due process of law has been validly exercised.

WHEREFORE, your Petitioner prays that a Writ of Certiorari may issue out of and under the seal of this Court directed to the United States Circuit Court of Appeals for the Third Circuit commanding the said Court to certify and send to your Court a complete transcript of the record and of all proceedings had therein; to the end that the case may be reviewed by this Court, that the judgment of the United States Circuit Court of Appeals

dismissing Petitioner's Writ of *Habeas Corpus* be reversed and that your Petitioner may be discharged from custody upon the said Writ.

MAXIMILLIAN KARL REICHEL,
Petitioner.

By
FRANCIS FISCHER KANE,
Attorney.

Dated:

## BRIEF IN SUPPORT OF THE PETITION.

### OPINIONS BELOW.

The Opinion of the District Court for the District of New Jersey (R. 71a) is unreported. The Opinions of the Circuit Court of Appeals (R. ) are not reported.

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### JURISDICTION.

The jurisdiction of this Court is invoked under Sec. 347 of Title 28 of the United States Code providing, *inter alia*, for writs of certiorari to Circuit Courts of Appeals.

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### STATEMENT OF THE CASE.

A statement of the case has been set forth in the Petition under the heading of "Summary and Short Statement of the Matter Involved."

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### ASSIGNMENTS OF ERROR.

The Circuit Court of Appeals for the Third Circuit erred in affirming the order of the District Court of New Jersey dismissing the Writ of *Habeas Corpus* issued for the release of the Petitioner from custody.

The Circuit Court of Appeals for the Third Circuit erred in dismissing Petition for a Rehearing.

The Circuit Court of Appeals for the Third Circuit erred in holding as a matter of law that the Petitioner became and remains a citizen of Germany.

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### ARGUMENT.

In opening it may be noted that the inquiry in this case is directed to the present status of the Petitioner.

"The validity of a detention questioned by a petition for *Habeas Corpus* is to be determined by the condition existing at the time of the final decision thereon. Stallings *v.* Splain, 253 U. S. 339; 64 L. Ed. 940."

*U. S. ex rel. Mensevich* v. *Tod, 264 U. S. 134; 68 L. Ed. 591 (1924).*

It may also be noted that in a case wherein the right of the government to detain the relator is in issue in a *habeas corpus* proceeding arising under the Alien Enemy Act, cited in the petition, that

"The legal question for decision is whether the conceded facts bring the appellant (relator) within the class of aliens whose restraint is authorized under the statute, 50 U. S. C. A. Sec. 21 and the Presidential Proclamation pursuant to which he is held. • • • (Proclamation dated December 8, 1941 No. 2526; 6 Fed. Reg. 6323.)

"With the attorney general's finding that restraint of the appellant (relator) is required as a measure of public safety the courts have no concern. • • • The relator's writ of *habeas corpus* can raise only the question whether he is an alien enemy within the statutory definition, that is, whether he is a 'native, citizen, denizen or subject' of Germany."

*U. S. ex rel. Schwarzkopf* v. *Uhl, 137 Fed. 2d 898 (1943).*

**The Petitioner is not a Native or Denizen of a Hostile Nation or Government.**

The United States Attorney in the Lower Court relied upon the contention that the Petitioner was a citizen or subject of Germany. It nevertheless seems advisable to consider briefly the meaning of the additional words "natives" and "denizens."

In the case of *U. S. ex rel. D'Esquiva* v. *Uhl, 137 Fed. (2d) 903 (1943),* the Government relied upon the status of the Relator as a "native" of a hostile nation. In disposing of the case Judge Clark of the Second Circuit defined the meaning of that term as follows:

> "We think that, unless bizarre results are to be expected, the term 'native of a hostile nation' must include one born of native citizen parents at a place which has now been recognized by our Government as a component part of a nation with which we are at war."

In that case the relator was born in Vienna and the case was remanded for the purpose of securing additional evidence upon the question of the recognition by the United States Government of the incorporation of Austria into the Third German Reich following the Anschluss of March 13, 1938.

In the present case the Petitioner is a native of Bohemia, a child of native born parents, and the land of his birth is now recognized by the United States as a component part of the Republic of Czechoslovakia, which is not "a hostile nation or government."

Little need be said as the applicability of the word "denizen." It has a specialized meaning which has no relation to the facts of this case. In the *Digest of International Law by Hackworth, Chapter IX, Nationality, p. 125,* appears a discussion of the meaning of the word in connection with its use in the Hawaiian Constitution of 1894 which provided for "Denization" by the executive counsel. Reference is made to *Blackstone's definition Commentaries, Vol. 1, Ch. 10, p. 374,* where the word is applied to letters patent "a high incommunicable branch of the royal prerogative."

It is distinguished from naturalization by the fact that the "first is conferred by act of the sovereign, the second is conferred by act of parliament."

In *U. S. ex rel. Zdunic* v. *Uhl, 137 Fed. (2) 858 (1943)*, the United States attorney relied upon the word "denizen" in holding the relator. The lower Court held the relator to be a "denizen" of Germany and dismissed the petition for *habeas corpus*. The Circuit Court of Appeals in reversing and remanding said, *inter alia*, "We are not disposed to attempt a definition of 'denizens' beyond that of Blackstone."

**The Petitioner is not a Citizen or Subject of a Hostile Nation or Government.**

As already indicated the contest in the lower Courts centered on the words "citizens" and "subjects"—the inclusive word in modern use is "nationals." Both Courts upon the facts submitted held as a matter of law that the Petitioner is a German citizen.

The query is as to the correctness of this conclusion.

Nationality status is a reciprocal relation subject to dissolution by certain acts of either party. It is not necessary to refer to the acts of the individual national which result in dissolution, their recognition is a relatively modern development, but the act of the sovereign in ceding territory, in the view of International Law and of our own Courts, always has dissolved the relationship theretofore existing between the inhabitants of the territory and the sovereign. This rule has applied with equal force in the case of territory transferred from one sovereign to another by conquest recognized as complete. The principle is so fundamental that it has never given rise to much discussion. The major inquiry has been directed to the relationship between the inhabitants and the new sovereign.

The Petitioner's life story vividly illustrates the application of the principle stated. He was born a national of the Austro-Hungarian Empire. When its sovereignty over his native land terminated his relations to it were

dissolved. He was accepted as a national of the Republic of Czechoslovakia, the new sovereign. The Republic relinquished his native land to the Third German Reich and severed its relation to the Petitioner. He recognized the new sovereign and was accepted by it as a national, the acceptance being based upon the provisions of the Munich Agreement of September 29, 1938, the Treaty with Czechoslovakia published November 20, 1938 and certain Decrees of the Third German Reich (R. 60a). These provisions all applied to the inhabitants of the ceded territory and were applicable to the Petitioner as a citizen or inhabitant of that territory, residing abroad. Now that the Republic of Czechoslovakia has taken over the land by conquest, recognized by our own Government as complete, the provisions under which the Petitioner was accepted as a national of the former sovereign have been abrogated and his relations to it dissolved. It no longer owes him the obligation of diplomatic protection or that of receiving him if expelled by the country wherein he is residing, which are the major obligations of a state to its citizens referred to by *Borchard* in his work entitled *"Diplomatice Protection of Citizens Abroad" (see Chapter I, Section 13)*, and he no longer owes allegiance to it.

The position taken by the Petitioner that his relation to the German government was dissolved when that Government ceased to be the sovereign of his native land is fully supported by the text book discussions of the subject and by the decisions of our own Supreme Court.

In Halleck's International Law 4th Ed. 1908, the question under discussion has been treated at substantial length in Vol. II in the chapter headed "Rights of Complete Conquest" which begins at page 501. The principle is there stated that when territory is transferred by conquest from one sovereign to another and the conquest is complete "the allegiance (of an inhabitant) to the former sovereign is entirely severed" (Sec. 5). "The ligament which bound him to his former sovereign is dissolved by

the transfer of the territory, for that sovereign can no longer afford him any protection in that territory" (Sec. 6).

Further references which support the principle involved are the following:

*American Insurance Co., et al.* v. *Cantor, 1 Pet. 511; 7 L. Ed. 242 (1828);*
*United States* v. *Percheman, 7 Pet. 51; 8 L. Ed. 604-617 (1833);*
*United States* v. *De Reptentigny, 72 U. S. (5 Wall) 211; 18 L. Ed. 627 (1866);*
*Moore's Digest of International Law, Sec. 379, page 312;*
*Hackworth's Digest of International Law, Vol. III, page 116, citing:*
*38 Opinions Attorney General (1934-1937), 525, 530.*

The matter is summed up in the opinion of the Attorney General above referred to as follows:

> "It is authoritatively stated to be 'a universally recognized customary rule of the law of nations that the inhabitants of subjugated as well as ceded territory lose their nationality and acquire that (but not necessarily full citizenship) of the state which annexes the territory,' subject only to any option expressly given concerning retention of former nationality."

An illustration of the meaning of this thoroughly established principle is found in Hackworth's Digest of International Law, Vol. III, Chapter IX, page 142, where the nationality of the inhabitants of Puerto Rico was considered by the Spanish Government and the United States Government following the conquest of that Island. It was agreed by both Governments under the principles

of International Law that the inhabitants of the Island had lost their Spanish nationality. It was further agreed by both Governments that those inhabitants who were born in Spain would be given the option of retaining their Spanish nationality or accepting the new sovereign.

It would seem that no principle of International Law is more fully established than the one at issue here, namely, that the inhabitants of a conquered territory or ceded territory lose their former nationality upon the act of cession or conquest and can retain their former nationality, only if provision is made therefore by the former sovereign. The German Government has made no such provision and the Petitioner has established by this proceeding that he would not elect German nationality if given the opportunity.

The District Court disposed of the question raised in this case in its Opinion (R. 72a-73a). The gist of its reasoning being as follows:

The Petitioner became a German national when he secured a German passport. He has done nothing to establish himself as a national of any other Country. He cannot become a citizen of Czechoslovakia without the express consent of the Government of that Country. If that Country should see fit to certify that he is one of its nationals he would automatically cease to be an enemy alien and would have to be discharged from custody, but unless it did so or unless the Petitioner did some positive act which clearly and emphatically wiped out his act of allegiance to the German Government in asking for and receiving a passport, he remained a citizen of that Government, and an alien enemy.

The Circuit Court of Appeals in its Opinion pointed out that the Petitioner was "by his own testimony 'Deutscher Volkszugehoriger' if not 'Volksdeutscher'" that "he elected to become and did become a German citizen" and that

"He has pointed to no established principle of law and we can find none which will serve to transmute his willingly acquired German citizenship into Czechoslovakian citizenship. Accordingly the order of the court below must be affirmed."

It is true that the Petitioner belongs to what was a minority group in Bohemia, designated as the German group. This minority was recognized by the great powers following the First World War, and provision was made for its protection against discrimination in the Treaty signed with the Republic of Czechoslovakia at St. Germaine, September 10, 1919. The history of the German minority group has been interwoven with the history of Bohemia for a thousand years. As a matter of current history we know that no provision for its protection was made at the conclusion of the Second World War, and what has happened to it gives a touch of mockery to the assurance of the District Court that the Petitioner would be freed if the proper officials of the Czechoslovakian Government claimed him as a citizen or national.

The principles of International Law, however, are applied indiscriminately to all the inhabitants of the land or territory. Under these principles it is clear that the question of their relationship to a sovereign who has given up political dominion of the land and their relation to the new sovereign, who has taken over, are separate questions. They may become interlocking by agreement between the two sovereigns, but in the absence of agreement the former sovereign is held to have severed its relations to the inhabitants and the new sovereign as an independent state may treat them as it chooses. It may refuse to accept them as nationals, may expel or even destroy them. Those who are not within the physical control of the new sovereign, because they are residing abroad at the time it takes over, may be refused recognition as nationals, and may be denied the right to return to their native land.

The converse of this is that those inhabitants or citizens who are residing abroad may elect to accept or to refuse to accept the nationality of the new sovereign.

This latter phase of the question has been fully developed in the recent case of *U. S. ex rel. Schwarzkopf* v. *Uhl, 137 Fed. 2d 898 (1943)*, in an Opinion by Judge Swan directed to determining the meaning of the word "citizens" as found in the Alien Enemy Act.

Schwarzkopf, the Relator in that case, was born in Prague in 1896, a national of the Austro-Hungarian Empire, later a national of Czechoslovakia. He was, therefore, not a native of a "hostile nation or government." The United States attorney argued that he was a "citizen" of a "hostile nation or government" by reason of the following facts:

The Relator removed from Prague to Germany and became a citizen of that Country in 1925 by naturalization. In 1927 he removed to the Austrian Tyrol and in 1933 became a citizen of Austria by naturalization. In October of 1936 he arrived in the United States for permanent residence as a Czechoslovakian. He applied for naturalization and before his application was granted he was arrested as an alien enemy December 9, 1941. On March 13, 1938 Austria was annexed by Germany. By a German Decree of July 3, 1938, German citizenship was granted all Austrian citizens. The Relator had done nothing indicative of his acceptance of the German sovereignty of Austria.

Judge Swan reviewed exhaustively the principles of International Law as found in the leading text books and our own Court decisions relating to the subject and concluded that if the inhabitants of the conquered or ceded territory remained within the territory their allegiance is transferred to the new sovereign, but if they have voluntarily departed before the annexation and have never elected to accept the sovereignty of the new government their allegiance is not so transferred.

He, therefore, held that the Relator was not a citizen of Germany.

The United States attorney apparently conceded that this principle was not open to question, but he argued that since Austria had entirely disappeared as a political entity the Relator could not be a citizen of that Country, and, therefore, must be a German citizen. In disposing of this argument Judge Swan pointed out that the Relator might remain without any nationality, that is, as a "stateless" person until he could acquire a new nationality. This phase of the case approaches very closely to the present one.

The Circuit Court of Appeals of the Second Circuit whose three Opinions have been referred to so extensively in this Brief has added materially to our understanding of the principles of International Law as applied to the descriptive terms used in the Alien Enemy Act. Its Opinions will be of value in clarifying many questions concerning the nationality and nativity of individuals which are certain to arise in view of the distortions wrought in Europe by the recent social convulsions. There is a question as to whether as much can be said for the Opinion of the Third Circuit in the present case.

It is submitted that the Petitioner is not a German citizen and is not an alien enemy within the purview of the Alien Enemy Act, that the Writ of *Habeas Corpus* should be sustained and that he should be released from custody.

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UNITED STATES OF AMERICA EX REL. MAXIMILLIAN KARL REICHEL, PETITIONER

*v.*

UGO CARUSI, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT*

**BRIEF FOR THE RESPONDENT IN OPPOSITION**

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT*

## BRIEF FOR THE RESPONDENT IN OPPOSITION

### OPINIONS BELOW

The opinion of the district court (R. 71a–73a) is not reported. The opinions of the Circuit Court of Appeals for the Third Circuit on the original hearing (R. 79–82) and on the rehearing (R. 89) are reported at 157 F. 2d 732.

### JURISDICTION

The judgment of the Circuit Court of Appeals was entered on October 1, 1946 (R. 82). A petition for rehearing (R. 83–88) was denied on

November 6, 1946 (R. 90). The petition for a writ of certiorari was filed on February 3, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

## QUESTION PRESENTED

Whether an alien, born in Bohemia, then a part of the Austro-Hungarian Empire, in 1905, who later became a Czechoslovakian citizen when the place of his birth was included in that country after World War I, and who, after the Munich Pact of 1938, while in the United States, petitioned to be and was recognized as a German citizen, is now a citizen or subject of an enemy country within the meaning of the Alien Enemy Act of 1798, despite the re-occupation of the territory of his birth and former residence by Czechoslovakia.

## STATUTE INVOLVED

The provisions of the Alien Enemy Act of 1798, R. S. 4067–4070, as amended, 40 Stat. 531, 50 U. S. C. 21–24, are set forth in the Appendix, *infra,* pp. 9–11.

## STATEMENT

Petitioner filed a petition for a writ of habeas corpus in the District Court for the District of New Jersey, in which State he was then detained by respondent as an alien enemy (R. 2a–4a). The sole basis of this petition is petitioner's contention that he is not now a citizen or subject of an

enemy country within the meaning of the Alien Enemy Act of 1798, pursuant to which he is detained (Par. 6, R. 3a). The facts are not in dispute.

Petitioner was born in 1905 in Bohemia, then a part of the Austro-Hungarian Empire (R. 3a, 11a, 74a). Following World War I, and while petitioner still lived there, Bohemia became a part of the newly formed Republic of Czechoslovakia. Petitioner and his family continued to live in the place of his birth (R. 11a, 12a). This region was included in the so-called "Sudetenland," and petitioner and his parents belonged to the German-speaking element of the population, petitioner attending the German language schools (R. 33a–35a).

Petitioner graduated from the German technical school in Prague, Czechoslovakia, in 1932, and continued post-graduate studies there until 1934 (R. 12a, 13a). After working for sometime in a private laboratory in Freiburg, Germany, he came to the United States in the middle of 1935 (R. 14a). He then travelled as a Czechoslovakian citizen on a Czechoslovakian passport (R. 15a). He has remained in this country continuously since that time (R. 74a).

The Munich Agreement, providing for the transfer of the territory of petitioner's birth to Germany, was signed on September 29, 1938, and was confirmed by the Treaty of November 20, 1938, between Germany and Czechoslovakia (R. 14a,

60a). Approximately one month after the signing of the Munich Agreement and before the publication of the formal Treaty, petitioner went to the German Consul in Boston[1] and requested a German passport. He was advised that instructions for issuing such passports had not yet been received and that in the meantime he should keep his Czechoslovakian passport. He ultimately received his German passport early in October of 1939,[2] surrendering his Czechoslovakian passport in exchange (R. 16a.) At this time he registered for German military service (R. 41a, 42a, 62a). Not all residents of the annexed territory could become German citizens under the Munich Agreement and subsequent treaty, but only certain racial and cultural Germans (*Volkszugehöriger*), of whom petitioner was one, were so entitled upon request after determination that they fulfilled the requirements of German law (R. 49a, 63a, 64a, 59a–61a).

Petitioner at this time and subsequently at the time of the registration of alien enemies in 1942 considered himself a German citizen and registered as such (R. 43a, 44a, 48a, 54a). He de-

[1] Petitioner never visited the Czechoslovakian Consul prior to the annexation of that country (R. 17a, 18a), nor, despite the fact that this country recognized the Czechoslovakian Government-in-Exile, did he visit the Czechoslovak consulate thereafter (R. 72a, 75a).

[2] His purpose in procuring the passport was, *inter alia*, to effectuate his return to Germany to work for an I. G. Farben subsidiary (R. 35a, 36a, 50a, 51a).

clared his intention of becoming a United States citizen in August, 1940 (R. 37a), but stated in March, 1944, that he wished his naturalization postponed until the war had terminated (R. 40a). In 1944 he applied for repatriation to Germany as a German national (R. 45a). When he was apprehended in August, 1944 (R. 2a, 8a), he said that he would not accept American citizenship if it were granted, because to desert Hitler at that point would be nothing short of treason (R. 67a–68a).

No formal treaty since the Munich Agreement and Treaty of 1938 has dealt with the citizenship of residents of the Sudetenland (R. 61a, 62a).[3] The territory of petitioner's birth has, however, been returned to the control of Czechoslovakia pursuant to the Potsdam Agreement (R. 32a, 55a).

The district court issued the writ, and heard testimony. At the conclusion of the hearing, the court made findings of fact, finding *inter alia* that petitioner had voluntarily accepted German citizenship, and that in 1943–44 he had expressed his affection for Germany and his satisfaction that his native land had become a part of the

[3] Petitioner evidently concedes what is the fact, that residents of the Sudetenland who sought and obtained German citizenship as he did are in the highest degree *persona non grata* to Czechoslovakia, and plainly will not be claimed or acknowledged by its government as citizens or nationals of Czechoslovakia (Pet. 16).

Third Reich (R. 74a–76a); the writ was accordingly dismissed (R. 77a). On appeal, the court below affirmed, holding that petitioner became and remained a citizen of Germany (R. 79–82, 89).

## ARGUMENT

Petitioner's position that he is no longer a German citizen is based entirely on the contention that the re-conquest and occupation by Czechoslovakia of the territory in which he was born has terminated the citizenship he acquired as a result of his application under the Munich Agreement and Treaty of 1938. This position involves a patent misapprehension concerning the authorities he cites. There is here involved no question as to the effect of the conquest and annexation of territory on the citizenship of the inhabitants of such territory. For petitioner was, at the time of re-conquest of the Sudetenland, an inhabitant of the United States and a citizen of Germany. His status as such was left unaffected by the annexation. *United States ex rel. Schwarzkopf* v. *Uhl,* 137 F. 2d 898 (C. C. A. 2); 1 Oppenheim, *International Law* (5th ed.), § 240.

Moreover, petitioner's German citizenship was not acquired as a result merely of the annexation of the territory by Germany in which he was born. He became a German through his own application as a racial and cultural German—a status having under German law no necessary connec-

tion with the territory of his birth or residence (R. 62a–64a). Indeed, it is clear from the testimony that petitioner's acquisition of German citizenship was a consensual act substantially equivalent to individual naturalization, and quite unlike the involuntary collective change of nationality which, by international law, is in certain circumstances a consequence of the annexation of territory by a new sovereignty.

There is here, also, no situation comparable to the one relied on by the Government in the *Schwartzkopf* case (*supra*) where it was unsuccessfully contended that all Austrians everywhere became German subjects upon annexation of their country by Germany because Austria had ceased to exist. Germany has not ceased to exist as an entity, and petitioner's German citizenship voluntarily elected by him persists in the absence of any showing of a subsequent naturalization on his part or of a treaty or other international agreement providing otherwise. Citizenship once acquired is presumed to continue. *Hauenstein* v. *Lynham*, 100 U. S. 483, 484. Nothing in the record here disturbs this presumption. The record is bare of indication on petitioner's part that he deviated in any way from his allegiance to Nazi Germany throughout the war or until he was actually faced with removal to Germany following its complete subjugation.

## CONCLUSION

The decision of the court below is obviously correct. There is no conflict. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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## APPENDIX

The Alien Enemy Act of 1798, as amended and as now contained in Title 50 of the United States Code, provides as follows:

> SEC. 21.[4] *Restraint, regulation, and removal.*
>
> Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety (R.

[4] The section numbers are those of Title 50, U. S. C.

S. § 4067 as amended by the Act of April 16, 1918, ch. 55, 40 Stat. 531).

SEC. 22. *Time allowed to settle affairs and depart.*

When an alien who becomes liable as an enemy, in the manner prescribed in section 21 of this title, is not chargeable with actual hostility, or other crime against the public safety, he shall be allowed, for the recovery, disposal, and removal of his goods and effects, and for his departure, the full time which is or shall be stipulated by any treaty then in force between the United States and the hostile nation or government of which he is a native, citizen, denizen, or subject; and where no such treaty exists, or is in force, the President may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality (R. S. § 4068).

SEC. 23. *Jurisdiction of United States courts and judges.*

After any such proclamation has been made, the several courts of the United States, having criminal jurisdiction, and the several justices and judges of the courts of the United States, are authorized and it shall be their duty, upon complaint against any alien enemy resident and at large within such jurisdiction or district, to the danger of the public peace or safety, and contrary to the tenor or intent of such proclamation, or other regulations which the President may have established, to cause such alien to be duly apprehended and conveyed before such court, judge, or justice; and after a full examination and hearing on such complaint, and sufficient cause appearing, to order such alien to be removed out of the territory of the United

States, or to give sureties for his good behavior, or to be otherwise restrained, conformably to the proclamation or regulations established as aforesaid, and to imprison, or otherwise secure such alien, until the order which may be so made shall be performed (R. S. § 4069).

Sec. 24. *Duties of marshals.*

When an alien enemy is required by the President, or by order of any court, judge, or justice, to depart and to be removed, it shall be the duty of the marshal of the district in which he shall be apprehended to provide therefor and to execute such order in person, or by his deputy or other discreet person to be employed by him, by causing a removal of such alien out of the territory of the United States; and for such removal the marshal shall have the warrant of the President, or of the court, judge, or justice ordering the same, as the case may be (R. S. § 4070).

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